

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CATHERINE A. PERRY,)
)
Plaintiff,)
) No. _____
v.)
)
MONSANTO COMPANY and BAYER)
AG,)
)
Defendants.)
)

DEFENDANT MONSANTO COMPANY'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 (and any other applicable laws), Defendant Monsanto Company (“Monsanto”) hereby gives notice of removal of this action, captioned *Catherine A. Perry v. Monsanto Company, et al.*, bearing case number G-4801-CI-0202003824-000, from the Court of Common Pleas of Lucas County, Ohio to the United States District Court for the Northern District of Ohio. Pursuant to 28 U.S.C. § 1446(a), Monsanto provides the following statement of grounds for removal.

Introduction

1. In this products liability lawsuit, Plaintiff Catherine Perry sues Monsanto and Bayer AG for injuries allegedly caused by Monsanto’s Roundup®-branded herbicides, which have glyphosate as their active ingredient. For decades, farmers have used glyphosate-based herbicides to increase crop yields, and home-owners, landscaping companies, and local government agencies have used these herbicides for highly effective weed control. Glyphosate is one of the most thoroughly studied herbicides in the world, and glyphosate-based herbicides have received regulatory approval in more than 160 countries. Since 1974, when Monsanto first

introduced a Roundup®-branded herbicide to the marketplace, the United States Environmental Protection Agency repeatedly has concluded that glyphosate does not cause cancer – including as recently as January 2020. Nevertheless, Plaintiff alleges that she developed cancer – specifically, non-Hodgkin’s lymphoma (“NHL”) – caused by exposure to Monsanto’s glyphosate-based herbicides.

2. This is one of many lawsuits that have been filed against Monsanto involving Roundup®-branded herbicides. A multidistrict litigation proceeding is pending in the United States District Court for the Northern District of California, before the Honorable Vince G. Chhabria, pursuant to 28 U.S.C. § 1407. See *In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC (N.D. Cal.); *In re Roundup Prods. Liab. Litig.*, MDL No. 2741, 214 F. Supp. 3d 1346 (J.P.M.L. 2016).

3. As discussed in more detail below, Monsanto removes this lawsuit because this Court has subject matter jurisdiction based on diversity of citizenship. Plaintiff is an Ohio citizen. For purposes of diversity jurisdiction, Monsanto is deemed to be a citizen of Missouri (where its principal place of business is located) and Delaware (Monsanto’s state of incorporation). Bayer AG is deemed to be a citizen of Germany. Accordingly, complete diversity of citizenship exists in this case as required by 28 U.S.C. § 1332. The statutory amount-in-controversy requirement is also satisfied because Plaintiff seeks damages for cancer allegedly caused by exposure to Monsanto’s Roundup®-branded herbicides.

Background And Procedural History

4. Plaintiff commenced this lawsuit in the Court of Common Pleas of Lucas County, Ohio by filing a Complaint, captioned *Catherine A. Perry v. Monsanto Company, et al.*, case

number G-4801-CI-0202003824-000, on or about December 29, 2020 (the “State Court Action”).

5. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons and Complaint served upon Monsanto in the State Court Action are attached as **Exhibit 1**. Plaintiff seeks damages for NHL allegedly caused by exposure to Monsanto’s glyphosate-based herbicides. *See, e.g.*, Complaint ¶¶ 1, 15, 134-40, 145-49, 175-76, 199-200, 217, 221-22, 233-34.

Basis For Removal – Diversity Jurisdiction

6. Plaintiff is, and was at the time the State Court Action was filed, an Ohio resident and citizen. *See* Complaint ¶¶ 8, 13-14; Westlaw Report Regarding Catherine A. Perry (excerpts attached as **Exhibit 2**).

7. Monsanto is, and was at the time the State Court Action was filed, a corporation incorporated under the laws of the State of Delaware, with its principal place of business in the State of Missouri. *See* Complaint ¶¶ 6, 16. Thus, Monsanto is deemed to be a citizen of Missouri and Delaware, for purposes of diversity jurisdiction.

8. Bayer AG is, and was at the time the State Court Action was filed, a German stock company with its principal place of business in Germany. *See* Complaint ¶¶ 10, 25. Accordingly, Bayer AG is deemed to be a citizen of Germany, a foreign citizen, for purposes of federal diversity jurisdiction.

9. The Complaint seeks compensatory and punitive damages based on the allegations that Monsanto’s Roundup®-branded herbicides caused Plaintiff to develop cancer (NHL). Therefore, it is plausible from the face of the Complaint that Plaintiff seeks damages in excess of \$75,000, exclusive of interest and costs, which satisfies the jurisdictional amount-in-

controversy requirement. 28 U.S.C. § 1332(a); *see Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (“[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”); *see also Ross v. First Family Fin. Servs., Inc.*, No. 2:01CV218-P-B, 2002 WL 31059582, at *8 (N.D. Miss. Aug. 29, 2002) (“[U]nspecified claims for punitive damage sufficiently serve to bring the amount in controversy over the requisite jurisdictional threshold set out in 28 U.S.C. § 1332.”). In fact, numerous other lawsuits seeking damages for NHL allegedly caused by Roundup®-branded herbicides have been filed against Monsanto in other federal courts asserting jurisdiction under Section 1332(a) and alleging damages in excess of \$75,000, exclusive of interest and costs.

10. In sum, this Court has original subject matter jurisdiction over this action based on Section 1332(a) because there is complete diversity of citizenship between Plaintiff and both Defendants (Monsanto and Bayer AG), and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

Procedural Requirements

11. The Court of Common Pleas of Lucas County, Ohio, is located within the Northern District of Ohio. Therefore, removal to this Court satisfies the venue requirement of 28 U.S.C. § 1446(a).

12. Monsanto received notice of process in the State Court Action on January 6, 2021. This Notice of Removal is timely, in accordance with 28 U.S.C. § 1446(b)(1), because it is being filed within 30 days of January 6, 2021.

13. Bayer AG’s consent to removal is not required because Bayer AG has not been served in the State Court Action. 28 U.S.C. § 1446(b)(2)(A). Bayer AG’s consent to removal also is not required because Bayer AG has not been “properly joined,” *id.*, because: (a) courts in

Ohio lack personal jurisdiction over Bayer AG for the claims asserted against it in this case; and
(b) Plaintiff has no viable claims against Bayer AG because her exposure to Roundup®-branded herbicides allegedly ended in 2009, Complaint ¶ 137; the transaction that resulted in Monsanto becoming an indirect, wholly-owned subsidiary of Bayer AG occurred many years later (in 2018); and Bayer AG did not assume any of Monsanto's liabilities for personal injury claims arising out of alleged exposure to Roundup®-branded herbicides.

14. The written notice required by 28 U.S.C. § 1446(d) will be promptly filed in the Court of Common Pleas of Lucas County, Ohio and will be promptly served on Plaintiff.

15. Monsanto does not waive any legal defenses and expressly reserves its right to raise any and all legal defenses in subsequent proceedings.

16. If any question arises as to the propriety of this removal, Monsanto requests the opportunity to present written and oral argument in support of removal.

Conclusion

For the foregoing reasons, Monsanto removes this lawsuit to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 (and any other applicable laws).

Dated: February 3, 2021

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing was filed electronically on February 3, 2021. Service of this filing will be made by electronic mail pursuant to Civ.R. 5(B)(2)(f) upon:

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